

UNITED STATES DISTRICT COURT  
DISTRICT OF MARYLAND

MICHAEL SIMONE

Plaintiff,

v.

CIVIL ACTION NO.

GOLDMAN & GOLDMAN, P.A

Defendant.

JANUARY 7, 2012

COMPLAINT

1. Plaintiff seeks relief pursuant to the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692.
2. The Court's jurisdiction is conferred by 15 U.S.C.1692k and 28 U.S.C. 1331.
3. Plaintiff is a natural person who resides in Pasadena, MD.
4. Defendant is a collection law firm in the State of Maryland and has a principal place of business located at Foxleigh Building, 2330 West Joppa Road, Suite 300 Lutherville, Maryland 210937.
5. Plaintiff is a consumer within the FDCPA.
6. Defendant is a debt collector within the FDCPA and advertises on their web page under areas of practice "collections and creditors rights."
7. Defendant communicated with Plaintiff or others on or after one year before the date of this action, in connection with collection efforts with regard to Plaintiff's disputed personal debt.

8. Defendant mailed an initial collection letter dated November 7, 2012 to the Plaintiff. *See Exhibit 1.*
9. Defendant mailed or caused to be mailed a second collection letter dated November 9, 2012, advising the Plaintiff that a complaint was filed in the Circuit Court for Anne Arundel County. *See Exhibit 2.*
10. Defendant in their Circuit Court complaint, date stamped filed by the Clerk of the Court on November 14, 2012, stated under the heading “factual allegations” ¶5 “By filing the above captioned Complaint on November 9, 2012, American Express is acting in full compliance with the applicable Statute of Limitations.”  
*See Exhibit 3.*
11. The Plaintiff also attaches a copy of the Circuit Court for Anne Arundel County case information sheet. *See Exhibit 4.*
12. The Defendant falsely threatened that they filed a lawsuit on November 9, 2012 , when in fact no such lawsuit was filed on that date. .
13. The Defendant’s statements in the lawsuit they filed on behalf of their client American Express against Michael Simone, specifically ¶5 is false, deceptive and misleading as this Court can see from the time and date stamp, on the left hand side of Exhibit 3, the complaint was not filed until November 14, 2012. See Exhibit 3 MD Circuit Court Clerk’s Office stamp.

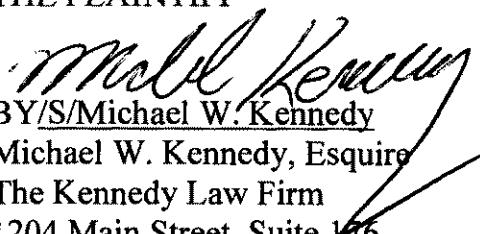
14. The Supreme Court held that the bona fide error defense does not apply to mistakes of law *in interpreting the legal requirements of the FDCPA*. See *Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich LPA, et al.*.

15. In the collection efforts, the Defendant violated the FDCPA; inter alia, section 1692e and f.

**WHEREFORE Plaintiff respectfully requests this Court to:**

1. Award Plaintiff statutory damages pursuant to the FDCPA on Count I.
2. Award Plaintiff Costs and Attorney fees pursuant to the FDCPA on Count I
3. Award such other and further relief as this Court may see fit.

THE PLAINTIFF

  
BY/S/Michael W. Kennedy  
Michael W. Kennedy, Esquire  
The Kennedy Law Firm  
1204 Main Street, Suite 176  
Branford, CT 06405  
203-4814040  
Fax: 443-440-6372  
mwk550@yahoo.com

Evan M. Goldman  
Admitted in MD, FL, and DC  
emg@goldmangoldman.com

LAW OFFICES  
**GOLDMAN & GOLDMAN, P. A.**

FOXLEIGH BUILDING  
2330 WEST JOPPA ROAD  
SUITE 300  
LUTHERVILLE, MARYLAND 21093

—  
(410) 296-0888  
TELECOPIER (410) 200-0777

**PLAINTIFF'S  
EXHIBIT**

November 7, 2012

**VIA FIRST CLASS MAIL**

Mr. Michael Simone  
8562 Tides Court  
Pasadena, Maryland 21122

**Re: American Express Centurion Bank ("American Express")  
Account No. xxxx-xxxxxx-52005 (the "Account")**

Dear Mr. Simone:

We represent American Express and have been asked to contact you regarding the unpaid balance on the above referenced account. Your current unpaid balance is \$7,329.02.

American Express has a range of payment options that may be available to assist you. We know you want to put this debt behind you, and we are committed to working with you to try to identify a solution to resolve your balance. We can be reached at (410) 296-0888 if you have any questions or if you wish to discuss payment arrangements. Please contact us so that we may explore which solution may work best for you.

If we do not reach a payment arrangement with you to resolve the Account balance, it is our intention to commence legal action against you on behalf of American Express to recover the balance due with respect to the Account, subject to your thirty (30) day right to dispute and receive verification of the debt as described below. If you are represented by counsel, please have your attorney contact me.

Payments may be sent to our office, payable to "American Express." However, if your payment is less than the full Account balance, we reserve the right to continue our collection efforts, unless we have reached a payment arrangement with you. Again, we urge you to contact us to discuss what type of payment arrangement may work for you.

**This is an attempt to collect a debt and any information obtained from you will be used for that purpose. Unless you dispute the validity of the debt, or any portion thereof, within thirty (30) days from your receipt of this letter, the debt will be assumed to be valid by us.**

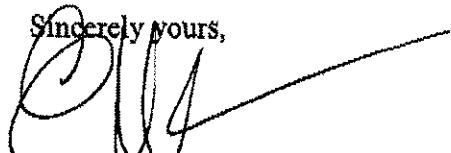
**If you notify the undersigned in writing within thirty (30) days from your receipt of this letter that the debt or any portion of it is disputed, we will obtain verification of the debt or of a judgment against you, and a copy of such verification or judgment will be mailed to you.**

Mr. Michael Simone  
November 7, 2012  
Page 2 of 2

Upon your written request within thirty (30) days from your receipt of this letter, we will provide you with the name and address of the original creditor, if different from the current creditor.

If legal action is commenced against you to recover the above debt within the 30 day period referred to above, the commencement of the legal action does not affect your rights set forth above to dispute the validity of the debt and request validation of the debt. You will still have all of the rights set forth above to dispute the validity of the debt within the 30 day period described above even if a lawsuit has been commenced against you within such period.

Any timeframes relating to the legal action, such as the timeframe to answer the summons and complaint, are timeframes established by the applicable rules of court, and are separate from the timeframes to dispute the debt as described above.

Sincerely yours,  
  
Evan M. Goldman

LAW OFFICES  
**GOLDMAN & GOLDMAN, P.A.**  
FOXLEIGH BUILDING  
2030 WEST JOPPA ROAD  
SUITE 900  
LUTHERVILLE, MARYLAND 21098  
  
(410) 296-0888  
TELECOPIER (410) 296-0777

Evan M. Goldman  
Admitted in MD, FL, and DC  
cmg@goldmangoldman.com

PLAINTIFF'S  
EXHIBIT

November 9, 2012

**Personal & Confidential**

Mr. Michael Simone  
8562 Tides Court  
Pasadena, Maryland 21122

Re: American Express Centurion Bank  
v. Michael D. Simone  
a/k/a Michael Simone  
New Suit

Dear Mr. Simone,

Enclosed please find a courtesy copy of the Complaint filed in the Circuit Court for Anne Arundel County. Once we receive the summons, we will serve it on you pursuant to local rules.

Please feel free to contact me to discuss this matter further.

This communication is from an attorney debt collector.

Sincerely yours,



Evan M. Goldman

EMG/ams  
Enclosure

PLAINTIFF'S  
EXHIBIT

3

AMERICAN EXPRESS CENTURION BANK \* IN THE  
4315 South 2700 West  
Salt Lake City, Utah 84184

\* CIRCUIT COURT

Plaintiff,

\* FOR

v.

\* ANNE ARUNDEL COUNTY,

MICHAEL D. SIMONE  
a/k/a MICHAEL SIMONE  
8562 Tides Court  
Pasadena, Maryland 21122

\* MARYLAND

Defendant.

\* Case No.: C12-17387

COMPLAINT

Plaintiff, American Express Centurion Bank ("American Express"), through counsel, hereby sues Defendant, Michael D. Simone a/k/a Michael Simone, and states:

1. Plaintiff, American Express, is a bank chartered under the laws of the State of Utah, with its principal place of business located at 4315 South 2700 West, Salt Lake City, Utah 84184.

2. Defendant, Michael D. Simone a/k/a Michael Simone ("Simone") is an individual residing at 8562 Tides Court, Pasadena, Maryland 21122.

3. Jurisdiction is appropriate in this Court pursuant to Section 6-102 of the Courts and Judicial Proceedings Article of the Annotated Code of Maryland ("Courts & Judicial Proceedings Article"). Venue is appropriate in this Court pursuant to Section 6-201 of the Courts & Judicial Proceedings Article.

Factual Allegations

4. This is an action by American Express to collect monies owed to it by Simone on a charge card account Simone has with American Express.

5. By filing the above-captioned Complaint on November 9, 2012, American Express is acting in full compliance with the applicable Statute of Limitations.

A. The Blue Card

6. American Express and Simone herein are parties to the Agreement Between American Express Credit Cardmember and American Express Centurion Bank (the "Blue Agreement"), pursuant to which American Express opened a Blue Card Account, Account No. xxxx-xxxxxx-52005 (the "Blue Account") for Simone and issued a Blue Card to Simone.

7. Pursuant to the Blue Agreement, Simone is required to pay the charges made to the Blue Account in the minimum payments specified in the monthly statements issued by American Express to Simone at his residence in Maryland, plus finance charges as specified in the Blue Agreement.

8. The Blue Agreement further provides that a default occurs:

- a. Whenever Simone fails to pay any amounts due by the payment due date specified in the monthly statements; or
- b. Whenever Simone defaults under any agreement he may have with any affiliate of American Express.

9. Simone defaulted under the Blue Agreement by failing to pay the minimum amount due pursuant to the monthly statements issued to Simone at his residence in Maryland.

10. Upon default, American Express may declare all amounts due under the Blue Agreement to be immediately due and payable. The Blue Agreement also provides for the payment of costs and reasonable attorney's fees upon default.

11. Due to Simone's default and his failure to pay the balance due despite demand, American Express is entitled to collect its reasonable attorney's fees in collecting the balance due under the Blue Agreement.

First Count  
(Breach of Blue Agreement)

12. American Express repeats and realleges each and every allegation contained in all of the foregoing paragraphs of this Complaint as though fully set forth herein.

13. Pursuant to the Blue Agreement, Simone is liable for all amounts charged to the Blue Account, plus finance charges and reasonable attorney's fees as specified in the Blue Agreement.

14. Simone has failed to pay the charges due on the Blue Account within the time specified in the Blue Agreement, which amounts total \$7,329.02 as of November 6, 2012.

15. As a result of Simone's default, American Express has declared immediately due and payable all obligations payable to American Express under the Blue Agreement.

16. American Express, in an effort to collect the unpaid amounts due from Simone has referred this matter to an outside attorney for collection.

17. By reason of the foregoing, American Express is entitled to judgment against Simone in the amount of \$7,329.02, plus court costs and reasonable attorney's fees, pursuant to the Blue Agreement.

WHEREFORE, Plaintiff, American Express Centurion Bank, demands judgment against Defendant, Michael D. Simone a/k/a Michael Simone, as follows:

- a. In the amount of \$7,329.02;
- b. Reasonable attorney's fees pursuant to the Blue Agreement;
- c. For the costs of this action; and
- d. For such other and further relief as this Court deems just and proper.

Second Count  
(Account Stated – Blue Account)

18. American Express repeats and realleges each and every allegation contained in all of the foregoing paragraphs of this Complaint as though fully set forth herein.

19. American Express duly issued to and sent to Simone at his residence in Maryland monthly statements that itemized the charges made to the Blue Account and the total amount due and owing on the Blue Account.

20. Simone received the monthly statements of account at his residence in Maryland without protest and neither objected to the statements nor indicated that the statements were erroneous in any respect. Thus, Simone acknowledged that the debt owed by him to American Express is true and correct.

21. Simone owes \$7,329.02 on the Blue Account. (Although the last statement issued to Simone may show a different balance due, payments received, credits issued, or Finance Charges assessed, if any, since the date of that statement have modified the account balance to \$7,329.02).

22. By reason of the foregoing, American Express is entitled to judgment against Simone in the amount of \$7,329.02, plus court costs and reasonable attorney's fees, pursuant to the Blue Agreement.

WHEREFORE, Plaintiff, American Express Centurion Bank, demands judgment against Defendant, Michael D. Simone a/k/a Michael Simone, as follows:

- a. In the amount of \$7,329.02;
- b. Reasonable attorney's fees pursuant to the Blue Agreement;
- c. For the costs of this action; and
- d. For such other and further relief as this Court deems just and proper.

Third Count  
(Unjust Enrichment – Blue Account)

23. American Express repeats and realleges each and every allegation contained in all of the foregoing paragraphs of this Complaint as though fully set forth herein.

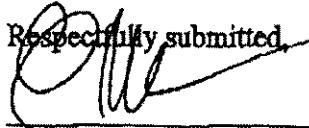
24. Simone has benefited from the charges made to the Blue Account, has acknowledged receipt of those benefits, and has retained the benefits from such charges, without paying therefor.

25. Accordingly, Simone has been unjustly enriched to the detriment of American Express.

26. By reason of the foregoing, American Express is entitled to judgment against Simone in the amount of \$7,329.02, plus court costs and reasonable attorney's fees, pursuant to the Blue Agreement.

WHEREFORE, Plaintiff, American Express Centurion Bank, demands judgment against Defendant, Michael D. Simone a/k/a Michael Simone, as follows:

- a. In the amount of \$7,329.02;
- b. Reasonable attorney's fees pursuant to the Blue Agreement;
- c. The costs of this action; and
- d. For such other and further relief as this Court deems just and proper.

  
Respectfully submitted,

Evan M. Goldman, Esquire

Mark Edelson, Esquire

Benjamin F. Bruins, Esquire

Sarah N. Lehr, Esquire

Deputy Goldman & Goldman, P. A.

Foxleigh Building

2330 West Joppa Road, Suite 300

Lutherville, Maryland 21093

[emg@goldmangoldman.com](mailto:emg@goldmangoldman.com)

(410) 296-0888

Attorneys for Plaintiff

TRUE COPY,

TEST: Robert P. Dinkworth, Clerk

By: \_\_\_\_\_

Deputy

Case Information  
Circuit Court of Maryland[Go Back](#)**Case Information**

Court System: **Circuit Court for Anne Arundel County - Civil System**  
 Case Number: **02C12173871**  
 Title: **American Express Centurion Bank vs Michael D Simone**  
 Case Type: **Contract** Filing Date: **11/14/2012**  
 Case Status: **Open/Active**

**Plaintiff/Petitioner Information**

(Each Plaintiff/Petitioner is displayed below)

Party Type: **Plaintiff** Party No.: **1**  
 Business or Organization Name: **American Express Centurion Bank**  
 Address: **4315 South 2700 West**  
 City: **Salt Lake City** State: **UT** Zip Code: **84184**

**Attorney(s) for the Plaintiff/Petitioner**

Name: **Goldman, Esq, Evan M**  
 Appearance Date: **11/14/2012**  
 Practice Name: **Goldman & Goldman, P A**  
 Address: **2330 West Joppa Road**  
**Foxleigh Bldg, Suite 300**  
 City: **Lutherville** State: **MD** Zip Code: **21093**

**Defendant/Respondent Information**

(Each Defendant/Respondent is displayed below)  
 Party Type: **Defendant** Party No.: **1**  
 Name: **Simone, Michael D**  
 Address: **8562 Tides Court**  
 City: **Pasadena** State: **MD** Zip Code: **21122**

**Aliases Defendant/Respondent**

Name: **Simone, Michael**

**Document Tracking**

(Each Document listed. Documents are listed in Document No./Sequence No. order)  
 Doc No./Seq No.: **1/0**  
 File Date: **11/14/2012** Close Date:  Decision:  
 Party Type: **Plaintiff** Party No.: **1**  
 Document Name: **Complaint**

Doc No./Seq No.: **2/0**  
 File Date: **11/14/2012** Close Date: **11/20/2012** Decision:  
 Party Type: **Plaintiff** Party No.: **1**  
 Document Name: **Attorney Appearance Filed**

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Doc No./Seq No.: **3/0**

File Date: **11/14/2012** Close Date: Decision:

Party Type: **Plaintiff** Party No.: **1**

Document Name: **Case Information Sheet Filed**

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Doc No./Seq No.: **4/0**

File Date: **11/20/2012** Close Date: **11/20/2012** Decision:

Party Type: **Defendant** Party No.: **1**

Document Name: **Writ of Summons - Civil Issued**

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*This is an electronic case record. Full case information cannot be made available either because of legal restrictions on access to case records found in Maryland rules 16-1001 through 16-1011, or because of the practical difficulties inherent in reducing a case record into an electronic format.*